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FEDERAL COMMUNICATIONS COMMISSION  
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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of

Amendment of Part 1 of the  
Commission's Rules --  
Competitive Bidding Proceeding

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WT Docket No. 97-82

To: The Commission

REPLY COMMENTS OF  
THE RURAL TELECOMMUNICATIONS GROUP

The Rural Telecommunications Group ("RTG"), by its attorneys, hereby replies to the comments filed in response to the *Order, Memorandum Opinion and Order and Notice of Proposed Rule Making ("Order and NPRM" or "NPRM")* released by the Federal Communications Commission ("FCC" or "Commission") on February 28, 1997, in WT Docket No. 97-82. In particular, RTG supports and adopts the arguments of the National Telephone Cooperative Association ("NTCA") advanced in its comments filed March 27, 1997 ("NTCA Comments").

I. STATEMENT OF INTEREST

RTG is a group of concerned rural telephone companies who have joined together to promote the efforts of its member rural telephone companies to speed the delivery of new, efficient and innovative telecommunications technologies to the populations of remote and underserved parts of the country.

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## II. DISCUSSION

### A. The Commission Cannot Write Rural Telephone Companies out of Section 309(j).

RTG agrees with NTCA that the rules as proposed effectively "write rural telephone companies out of Section 309(j)." See NTCA Comments at 3. The Commission proposes adopting the definition of a rural telephone company found in the Telecommunications Act of 1996 ("1996 Act") as the uniform definition for purposes of competitive bidding. NTCA and RTG support this proposal. A uniform definition is appropriate, but the public benefits of such an approach are lost if the Commission continues to effectively "rewrite" the Act to exclude rural telephone companies by basing designated entity benefits solely on size.<sup>1</sup>

Section 309(j) of the Communications Act of 1934 ("the Act") requires the Commission to prescribe regulations which "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to

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<sup>1</sup> See, e.g., *In re* Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking*, CC Docket No. 92-297, FCC 97-82 at ¶ 362 (rel. March 13, 1997) ("*LMDS Second R&O*") (special provisions not needed for rural telephone companies); *In re* Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service ("WCS"), *Report and Order*, GN Docket No. 96-228, FCC 97-50 at ¶ 200 (rel. February 19, 1997) ("*WCS R&O*") (no provisions for rural telephone companies); *In re* Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, Narrowband PCS, *Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, PP Docket No. 93-253, 10 FCC Rcd 175 (1994) (provisions for rural telephone companies unnecessary); *In re* Amendment of Parts 21 and 74 of the Commission's Rules with regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Fixed Service and Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, MM Docket No. 94-131, PP Docket No. 93-253, *Report and Order*, 10 FCC Rcd 9589 (1995) (no special provisions for rural telephone companies).

participate in the provision of spectrum based services.”<sup>2</sup> The Act also requires the Commission to promote economic opportunity and “disseminat[e] licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.”<sup>3</sup>

The law requires the Commission to ensure that rural telephone companies have an opportunity to provide new services so that rural Americans are afforded communications opportunities similar to those of their urban counterparts at reasonably related prices. Section 309(j)(3)(B) of the Act requires the Commission to promote “the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas.”<sup>4</sup> Section 309(j)(3)(B) of the Act requires the Commission to prescribe regulations which “include performance requirements, ...to ensure prompt delivery of service to rural areas.”<sup>5</sup> Indeed, Section 1 of the Act establishes the Commission for the purpose of making available “to all the people of the United States, ...Nation-wide, and world-wide wire

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<sup>2</sup> 47 U.S.C. § 309(j)(4)(D).

<sup>3</sup> 47 U.S.C. § 309(j)(3)(B).

<sup>4</sup> *Id.*

<sup>5</sup> As the Commission examines its auction procedures it should be mindful of the cumulative affects of its auction and service rules on rural Americans and rural telephone companies. Many of the Commission’s policies, such as “liberal” construction requirements, the use of large service areas, and eligibility restrictions collectively reduce the opportunities for rural telephone companies and delay service to rural America. For example, a licensee in the Local Multipoint Distribution Service (“LMDS”) need only provide service to 20% of the population of a BTA within 10 years. *LMDS Second R&O* at ¶ 270. This lax buildout requirement provides very little incentive to a licensee to provide service to a sparsely populated rural area or to partition to a rural telephone company.

and radio communication service with adequate facilities at reasonable charges.”<sup>6</sup>

Congress understood that rural telephone companies would deploy new services to rural America. Accordingly, Congress recognized rural telephone companies not for their size but for their unique structural position in the nationwide communication network, and directed the Commission to afford them opportunities to provide new services.<sup>7</sup> If Congress had intended for the Commission to award preferences and incentives based only on size, Congress would have required the Commission to disseminate licenses and ensure opportunity only for “small businesses.”<sup>8</sup> Congress did not.

Although rural telephone companies may not be the only potential providers of telecommunication service to rural America, Congress clearly decided that providing rural telephone companies with an opportunity to provide new and innovative services was a significant means of ensuring that rural Americans had access to those services.<sup>9</sup> Unlike other “small businesses,” rural telephone companies necessarily fill a particular niche in the lives of

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<sup>6</sup> 47 U.S.C. § 151.

<sup>7</sup> In addition to Section 309(j)(3), numerous provisions of the Act reflect Congresses’ recognition of this important role of rural telephone companies. *See, e.g.*, 47 U.S.C § 251(f) (rural telephone company exemption from interconnection obligations); 47 U.S.C § 254 (Universal Service Support).

<sup>8</sup> Subsequent to the enactment of Section 309(j), the Supreme Court limited Congress’s and the Commission’s power to award preferences based on race and gender, *Adarand v. Peña*, 115 S. Ct. 2097 (1995). The Court’s decision does not, however, diminish Congress’s intent to promote opportunity based on factors other than size. Rural telephone companies are not a suspect class, and preferences designed to promote opportunity for them do not raise constitutional problems.

<sup>9</sup> Congress clearly recognized that rural telephone companies would have the incentive for long term (*i.e.*, more than 10 years) investment in the provision of new telecommunications services. Other businesses seeking to see a quicker return on their investment (*i.e.*, five to ten years) are unlikely to provide service to these sparsely populated areas.

rural Americans by providing advanced telecommunications services to rural areas. The Commission is not free to ignore Congress' determination. Accordingly, as the Commission attempts to standardize its auction procedures, it should "write" rural America back into Section 309(j) by creating benefits for rural telephone companies.

**B. The Commission Should Adopt Specific Benefits for Rural Telephone Companies, but Maintain Some Flexibility on a Service-by-Service Basis.**

RTG supports NTCA's request that in addition to adopting a standard definition of "rural telephone company," the Commission should also adopt standard bidding credits and installment payment plans for rural telephone companies to be applied in all future auctions.<sup>10</sup> In addition, while RTG applauds the Commission for attempting to reduce regulatory uncertainty, the Commission should maintain sufficient flexibility to create other benefits for rural telephone companies on a service specific basis where appropriate.

The Commission's initial decision to allow rural telephone companies special partitioning rights in the Personal Communications Service ("PCS") is a good example of the kind of opportunity the Commission should promote and of the Commission's initial awareness of the desirability of crafting opportunities specifically for rural telephone companies.<sup>11</sup> Ironically, the Commission even cites this example in the *NPRM* in the context of defining rural telephone companies.<sup>12</sup> Had the Commission not subsequently eliminated the benefit, rural telephone

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<sup>10</sup> See NTCA Comments at 2-3.

<sup>11</sup> Implementation of Section 309(j) of the Communications Act — Competitive Bidding, *Fifth Report and Order*, 9 FCC Rcd 5532, 5597-9 (1994) (*Competitive Bidding Fifth R&O*).

<sup>12</sup> *NPRM* at note 71. The Commission's citation to rural telephone PCS partitioning in the context of defining rural telephone companies is particularly puzzling since the Commission's


company partitioning would have been a more valuable tool which rural telephone companies could have used to provide PCS to their wireline customers.<sup>13</sup>

### **III. Conclusion**

In recognition of the important role rural telephone companies play in providing new telecommunications services to rural America, the Commission should reevaluate its construction of Section 309(j) of the Act and award rural telephone companies specific auction related opportunities to participate in spectrum-based services.

Respectfully submitted,

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subsequent extension of partitioning eligibility to all entities seemingly eliminates the need to define "rural telephone company" with respect to PCS partitioning.

<sup>13</sup> See *In re Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Service Licensees, Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 96-148, FCC 96-474 (rel. December 20, 1996) (*PCS Partitioning R&O*).